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Proposed Counsel to the Debtors
 and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - - x
 :
 In re: : Chapter 11
 :
 CIRCUIT CITY STORES, INC., : Case No. 08- _____ (____)
et al., :
 :
 Debtors. : Jointly Administered
 - - - - - x

**DEBTORS' MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE
 SECTIONS 105, 362(b), 363, 503(b), 506, 546(b), 1107(a)
 AND 1108 AND BANKRUPTCY RULE 6003 AUTHORIZING PAYMENT OF
 CERTAIN PREPETITION SHIPPING AND DELIVERY CHARGES**

The debtors and debtors in possession in the
 above-captioned cases (collectively, the "Debtors"),¹

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN,
 (cont'd)

hereby move (the "Motion") for entry of an order, pursuant to sections 105(a), 362(b)(3), 363(b), 503(b), 506, 546(b), 1107(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to pay certain prepetition shipping and delivery charges and related possessory liens. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Bruce H. Besanko, Executive Vice President and Chief Financial Officer of Circuit City Stores, Inc., in Support of Chapter 11 Petitions and First Day Pleadings (the "Besanko Declaration"), filed with the Court concurrently herewith. In further support of the Motion, the Debtors respectfully represent:

(cont'd from previous page)

Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 362(b)(3), 363(b), 503(b), 506, 546(b), 1107(a) and 1108. Such relief is warranted pursuant to Bankruptcy Rule 6003.

BACKGROUND

3. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Besanko

Declaration, filed concurrently herewith and fully incorporated herein by reference.²

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. No trustee or examiner has been appointed in these chapter 11 cases, and no committees have yet been appointed or designated.

RELIEF REQUESTED

6. By this Motion, the Debtors seek entry of an order authorizing, but not directing, them to pay any prepetition shipping and associated fees and expenses (the "Shipping Charges") to CTSI ("CTSI"), an auditing and payment company employed by the Debtors, and to any third party shippers, haulers, common carriers and other transporters (the "Carriers"), that the Debtors determine, in the exercise of their business judgment, are necessary or appropriate to obtain the release of goods in the possession of such parties and to satisfy the liens, if any, in respect of amounts owed to such

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Besanko Declaration.

parties. The Debtors estimate that the prepetition Shipping Charges owing as of the Petition Date are collectively approximately \$10 million. Accordingly, the Debtors request authorization to pay the prepetition Shipping Charges in an amount not to exceed \$10 million.

7. The Debtors propose that any payments made pursuant to the Motion be subject to the following conditions:

- (a) The Debtors, in their sole discretion, shall determine which parties, if any, are entitled to payment under this Motion; and
- (b) Prior to making a payment to a party under this Motion, the Debtors may, in their absolute discretion, settle all or some of the prepetition claims of such party for less than their face amount without further notice or hearing.

8. The Debtors also seek entry of an order confirming that the Carriers will have administrative expense priority claims under Bankruptcy Code section 503(b) for those undisputed obligations arising from prepetition freight orders outstanding as of the Petition Date relating to goods delivered, received and accepted by the Debtors after the Petition Date, including goods in transit on or after the Petition Date.

9. The Debtors also request that all banks and other financial institutions on which checks to the Carriers or CTSI are drawn be authorized and directed to receive, process, honor and pay any and all such checks, whether presented prior to or after the Petition Date, upon each such bank receiving notice of such authorization. In addition, the Debtors request authority to issue postpetition checks as necessary to replace any prepetition checks issued with respect to the Shipping Charges that may be dishonored.

BASIS FOR RELIEF

10. In the normal course of their businesses, the Debtors incur certain fees and charges to the Carriers to ship, transport, store and deliver goods through the Debtors' established distribution networks, as well as to CTSI for auditing and payment services in connection with the Shipping Charges. At any given time, the Carriers are shipping goods to the Debtors' various distribution, repair and return facilities as well as shipping goods from those facilities to the Debtors' stores (the "Stores") and customers' homes. The Debtors obtain certain of their merchandise from overseas and

use the Carriers to have those goods shipped to them. In addition, the Debtors are required to pay customs duties for goods delivered to them from overseas.

11. The Debtors have contracts with all of the Carriers for the transportation services provided. The Carriers are generally not paid in advance but rather invoice the Debtors for shipping services previously rendered. CTSI audits these invoices, and, on a weekly basis, aggregates the invoices and sends the Debtors a list with the total amount owed for the shipping services for that week. The Debtors wire the necessary funds to CTSI which, in turn, distributes these amounts to the Carriers.

12. The Debtors rely extensively on the Carriers to distribute and transport merchandise from the vendor to each of their eight (8) distribution centers, located in Brandywine, MD, Bethlehem, PA, Livermore, CA, Industry, CA, Ardmore, OK, Walnut, CA, Marion, IL and Groveland, FL (collectively, the "Distribution Centers") and from the Distribution

Centers to the Stores.³ The Stores also receive certain merchandise - in particular, movies, music and video games - through a distributor, Alliance Entertainment Corporation ("AEC"), or directly from the vendor. In addition, the Debtors maintain seven (7) repair centers (the "Repair Centers"), ten (10) home delivery locations (the "Home Delivery Centers"), and six (6) product return centers (the "Product Return Centers"), each of which ships and receives merchandise. The Debtors further rely on the Carriers to return goods, merchandise and products to the Debtors' vendors. The Debtors rely on CTSI to ensure that invoices received by the Carriers are correct and that the Carriers timely paid.

13. The services provided by CTSI and the Carriers are critical to the day-to-day operations of the Debtors' retail business. At any given time, the Debtors are relying on the Carriers for the timely, consistent delivery of goods from the vendors to the

³ The Debtors fill orders placed through their online store at six (6) fulfillment centers located in six of the Distribution Centers.

Distribution Centers, the Home Delivery Centers and the Stores; from the Distribution Centers, AEC, and the Repair Centers, to the Stores; from the Stores to the Repair Centers; from the Home Delivery Centers to customers' homes; and, finally, for goods returned to the vendors, from the Stores, the Product Return Centers and the Distribution Centers back to the vendors or AEC.

14. As an example of the magnitude of the Debtors' reliance on CTSI and the Carriers, during the 2008 fiscal year, the Debtors' Shipping Charges were approximately \$122 million. The Debtors seek entry of an order authorizing, but not directing, payment of any outstanding prepetition shipping charges and customs duties in an amount not to exceed \$10 million in the event that any such shipments are not ceased prior to the Petition Date.

15. Generally the cost of shipment of merchandise from the vendor to the Distribution Centers or other facilities is initially invoiced to CTSI, which acts as middleman - providing the Debtors with an aggregate request for the invoiced amounts, receiving the funds from the Debtors, and distributing the funds

to the appropriate Carrier. CTSI's fee for these services is approximately \$150,000 per year. The Debtors, however, pay the Carriers to transport goods from overseas directly. Because of the filing of these chapter 11 cases, certain Carriers who hold goods for delivery to or from the Debtors may refuse to release such goods pending payment for their services, thereby severely disrupting the Debtors' operations. Similarly, CTSI may refuse to continue providing auditing and payment services to the Carriers on the Debtors' behalf if it is not paid outstanding prepetition amounts. Should CTSI refuse to perform such services, the Debtors' distribution network will be severely disrupted and the Debtors' may be unable to timely pay the Carriers. As a result, the Carriers may, again, refuse to deliver goods in their possession, leading to potentially devastating consequences for the Debtors' business.

16. As established in the Besanko Declaration, the Debtors seek to pay the prepetition Shipping Charges for several reasons. First, if the prepetition Shipping Charges are not paid, many of the Carriers may refuse to

perform additional services for the Debtors. In such event, the Debtors will incur additional expenses (such as premium shipping costs) to replace the Carriers, which amounts will likely exceed the amount of unpaid prepetition Shipping Charges that the Debtors request permission to pay hereunder.

17. Second, because of the "hub and spoke" method of distribution employed by the Debtors, as well as space limitations, the Debtors' Distribution Centers and the Stores hold only limited quantities of merchandise at a given time. As a result, the Debtors must replenish their inventory frequently. Approximately 60% of the Stores replenish their merchandise twice per week. The remainder receive merchandise once per week. Thus, if shipments from the Distribution Centers to the stores are not made promptly and regularly, the Debtors would risk having inadequate in-store inventory, which would frustrate the expectations of their customers, cause a loss of customer goodwill, and potentially force a shutdown of certain of the Stores. Such an outcome could be devastating to the Debtors' reorganization efforts.

18. Finally, any delays in payment of Shipping Charges with respect to goods that are in the possession of the Carriers as of the Petition Date will likely result in the assertion, under applicable law, of possessory liens upon the Debtors' property in the possession of such parties. For instance, California statutory law provides that "any carrier has a lien on freight in its possession for the total amount owed the carrier by the shipper for freightage, charges for services and advances due on freight previously delivered upon the promise of the shipper to pay freightage, charges and advances." Cal. Civ. Code § 3051.5. Thus, the Debtors will have no alternative but to pay the Shipping Charges in full in any event in order to effect the release of any liens securing payment of such charges.

APPLICABLE AUTHORITY

I. PAYMENT OF THE SHIPPING CHARGES IS APPROPRIATE UNDER BANKRUPTCY CODE 363(b).

19. Bankruptcy Code section 363(b) provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the

ordinary course of business, property of the estate.”

11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); see, e.g., FV Steel and Wire Co., Case No. 04-22421 (Bankr. E.D. Wis. Feb. 26, 2004); In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002). To do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” Ionosphere Clubs, 98 B.R. at 175; In re NVR L.P., 147 B.R. 126, 128 (Bankr. E.D. Va. 1992).

20. As discussed above, it is the Debtors’ business judgment that the failure to pay the Shipping Charges could have a material adverse impact on the day-to-day operations of their businesses and, thus, their efforts to pursue restructuring alternatives.

II. PAYMENT OF THE SHIPPING CHARGES IS WARRANTED UNDER BANKRUPTCY CODE SECTIONS 362(b)(3) AND 546(b).

21. In addition, the Debtors believe that their failure to pay the Shipping Charges may result in the assertion of possessory liens by the respective claimants under applicable state law with respect to any

goods in their possession (collectively, the "Liens"). Under Bankruptcy Code section 362(b)(3), the act of perfecting such Liens, to the extent consistent with Bankruptcy Code section 546(b)⁴, is expressly excluded from the automatic stay otherwise imposed by Bankruptcy Code section 362(a).

22. Moreover, to protect their asserted lien rights, the Carriers may refuse to release goods in their possession unless and until their prepetition claims for services have been satisfied. Therefore, notwithstanding the automatic stay imposed by Bankruptcy Code section 362, many of these parties: (a) may be entitled to assert and perfect Liens against the Debtors' property, which would entitle them to payment ahead of other general unsecured creditors in any event; and (b) may hold the property subject to the asserted Liens pending payment, to the direct detriment of the Debtors and their estates.

⁴ Under Bankruptcy Code section 546(b), a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A).

23. Moreover, since the amount of Shipping Charges may be less than the value of any property securing those claims, any party holding lien rights arguably are fully secured creditors. In general, under Bankruptcy Code section 506(b), fully secured creditors are entitled to receive: (a) payment in full of their prepetition claims under any confirmed plan or plans in these chapter 11 cases; and (b) the postpetition interest accruing on such claims to the extent that such claims are oversecured. Consequently, payment of the Shipping Charges will: (a) give the Carriers no more than that to which they otherwise would be entitled under a plan; and (b) save the Debtors the interest costs that otherwise may accrue on the Shipping Charges during these chapter 11 cases.

III. PAYMENT OF THE SHIPPING CHARGES IS AUTHORIZED UNDER BANKRUPTCY CODE SECTIONS 1107(a) AND 1108.

24. The Debtors, operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value

justifies) equity owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." Id.

25. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." Id. The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," id. at 479, and also when the payment was to "sole suppliers of a given product," id. at 498. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the

claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

26. Payment of the Shipping Charges meet each element of the CoServ court's standard. First, as described above, alternative providers would be difficult, and in certain instances, nearly impossible to find. Any disruption in the Debtors' interdependent transportation network would significantly disrupt the Debtors' businesses.

27. Second, the shutdown of the Debtors' operations would cost the Debtors' estates millions of dollars in lost revenues. The harm and economic disadvantage that would stem from the failure to pay any of the Carriers is grossly disproportionate to the amount of the prepetition claim that would have to be paid. This is particularly true given the approaching the holiday season, an extremely high traffic time for the Debtors. For example, nearly one-third of all the business that the Debtors do from their online store occurs between Thanksgiving and Christmas. Given the

accompanying high volume of transportation services required to support this high sales volume, it is especially important that the Debtors maintain positive relationships with their Carriers and CTSI and that the transportation network is not interrupted.

28. Third, with respect to CTSI and each of the Carriers, the Debtors have examined other options short of paying the Shipping Charges and have determined that to avoid significant disruption of the Debtor's business operations there exists no practical or legal alternative to payment of the Shipping Charges.

29. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 by payment of the Shipping Charges.

IV. BANKRUPTCY CODE SECTION 105 AND THE DOCTRINE OF NECESSITY SUPPORT PAYMENT OF THE SHIPPING CHARGES.

30. The Debtors' proposed payment of prepetition Shipping Charges should be authorized pursuant to Bankruptcy Code section 105 and under the "doctrine of necessity."

31. Bankruptcy Code section 105 authorizes this Court "to issue any order . . . necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105. For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the going concern value of their businesses in order to effect a successful reorganization through, among other things, continuing the orderly day-to-day operation of the Debtors' electronics retail business, payment of the Shipping Charges as requested herein is proper in accordance with Bankruptcy Code section 105.

32. Payment of the Shipping Charges is further supported by the doctrine of necessity. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. See In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued

operation of the debtor[,]" and must show a "substantial necessity."); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment).

33. The doctrine of necessity is a widely accepted component of modern bankruptcy jurisprudence. See In re NVR L.P., 147 B.R. at 127 ("[T]he 'necessity of payment' rule is a narrow exception well-established in bankruptcy common law."); Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers' prepetition claims when such suppliers could destroy debtor's business by refusing to deliver new inventory on eve of debtor's key sales season).

34. For the reasons discussed herein, it is evident that payment of the Shipping Charges is necessary to the Debtors' effective reorganization. In particular, absent payment of the Shipping Charges, CTSI and the Carriers may refuse to continue doing business with the Debtors, thereby severely disrupting in the Debtors' interdependent transportation network, and in

turn, the Debtors' businesses. The resulting shutdown or reduction in the Debtors' operations would cost the Debtors' estates millions of dollars in lost revenues. Hence, this Court should exercise its equitable powers to grant the relief requested in this Motion.

V. PAYMENT OF THE SHIPPING CHARGES IS WARRANTED UNDER BANKRUPTCY RULE 6003.

35. Similarly, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003.

36. No court within the Fourth Circuit has interpreted the "immediate and irreparable harm" language in the context of Bankruptcy Rule 6003 in any reported decision.⁵ However, the Fourth Circuit Court of

⁵ Although there is not direct authority concerning Bankruptcy Rule 6003 in the Fourth Circuit, at least one bankruptcy court, applying Bankruptcy Rule 6003, concluded that first-day relief in a similar context was warranted because such relief was necessary to avoid irreparable harm. See In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549-50 (Bankr. S.D. Fla. 2008) (holding that Rule

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Appeals has interpreted the same language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Hughes Network Systems, Inc. v. Interdigital Communications Corp., 17 F.3d 691, 694 (4th Cir. 1994). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Scotts Co. v. United Industries Corp., 315 F.3d 264, 283, (4th Cir. 2002) (citing Direx Israel, Ltd. v. Breakthrough Medical Corp., 952 F.2d 802, 812 (4th Cir. 1991)).

37. If the Carriers halt the shipment of merchandise due to non-payment of the Shipping Charges, the Debtors will likely have inadequate in-store inventory, which would reduce sales, frustrate the expectations of the Debtors' customers, and cause a loss of customer goodwill. Therefore, to the extent that the requirements of Bankruptcy Rule 6003 are applicable to

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6003 permits entry of retention orders on an interim basis to avoid irreparable harm).

the relief requested in the Motion, the Debtors submit that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm as defined by the Fourth Circuit Court of Appeals.

38. Accordingly, the Court should allow the payment of the Shipping as requested herein.

39. Courts in this Circuit and elsewhere have authorized the payment of prepetition amounts due for shipping costs in other chapter 11 cases. See, e.g., In re Movie Gallery, Inc., Case No. 07- 33849 (DOT)(Bankr. E.D. Va. Oct. 17, 2007)(authorizing payment to certain shippers, warehousemen and other lien claimants); In re Boyds Collection, Ltd., Case No. 05-43793 (DWK)(Bankr. D. Md. Oct. 24, 2005)(authorizing payment of prepetition amounts owed to shippers); In re Tweeter Home Entertainment Group, Inc., Case No. 07-10787 (PJW)(Bankr. D. Del. Jun. 13, 2007); In re Radnor Holdings Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Aug. 23, 2006).

40. Nothing in this Motion shall be construed as a request for authority to assume any executory contract under Bankruptcy Code section 365.

41. Notwithstanding anything to the contrary herein, any payment to be made hereunder shall be subject to any cash collateral or postpetition financing documents or orders approved or entered in these cases.

NOTICE

42. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the Eastern District of Virginia; (ii) counsel to the agent for Debtors' postpetition lenders; (iii) counsel to the agent for the Debtors' prepetition lenders; and (iv) the Debtors' top fifty (50) largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice of the Motion is required.

WAIVER OF MEMORANDUM OF LAW

43. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

44. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: November 10, 2008
Richmond, Virginia

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Proposed Counsel to the Debtors
 and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - -	x	
	:	
In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08- _____ (____)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	x	

**ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 363,
 503(b), 506, 546, 1107(a) AND 1108 AND BANKRUPTCY RULE
 6003 AUTHORIZING PAYMENT OF CERTAIN PREPETITION SHIPPING
 AND DELIVERY CHARGES**

Upon the motion (the "Motion")¹ of the Debtors
 for entry of an order, pursuant to Bankruptcy Code

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

sections 105, 363(b), 503(b), 506, 546, 1107(a) and 1108 and Bankruptcy Rule 6003, authorizing the Debtors to pay certain prepetition shipping and delivery charges and related possessory liens; and the Court having reviewed the Motion and the Besanko Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.
2. The Debtors are authorized, but not directed, to make such payments to CTSI and the Carriers as the Debtors determine, in the exercise of their business judgment, are necessary or appropriate in order to obtain release of goods held by the Carriers and the Debtors may settle all or some of the prepetition claims of the Carriers in order to obtain the release of goods.

Notwithstanding anything to the contrary in this Order, the prepetition Shipping Charges and customs duties to be paid pursuant to this Order shall not exceed \$10 million in the aggregate (the "Shipping Cap").

3. All payments on the Shipping Charges made under this Order shall be subject to the following conditions:

- (a) The Debtors, in their sole discretion, shall determine which Carriers, if any, are entitled to payments; and
- (b) Prior to making payment to a Carrier, the Debtors may, in their absolute discretion, settle all or some of the prepetition claims of the Contractor for less than their face amount without further notice or hearing.

4. The Carriers shall have administrative expense claims with priority under Bankruptcy Code section 503(b) for those undisputed obligations arising from prepetition purchase orders outstanding as of the Petition Date and relating to goods delivered, received and accepted by the Debtors after the Petition Date, including goods in transit on or after the Petition Date, and the Debtors are authorized to pay such claims in the ordinary course of business.

5. All applicable banks and other financial institutions are hereby authorized and directed to receive, process, honor and pay any and all checks evidencing amounts paid by the Debtors pursuant to the Motion, whether presented prior to or after the Petition Date.

6. The Debtors are authorized to issue postpetition checks as necessary to replace any prepetition checks that were issued with respect to the Shipping Charges and may be dishonored and such reissued checks shall reduce the Shipping Cap.

7. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

8. Nothing herein shall be deemed an assumption or an authorization to assume any contracts or other agreements, including with any of the Carriers or CTSI, pursuant to Bankruptcy Code section 365.

9. The provisions contained herein shall not be construed to limit, or in any way affect, the

Debtors' ability to contest any claims on any ground permitted by applicable law.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. The requirement under Local Rule 9013-1(G) of the Local Rules for the United States Bankruptcy Court for the Eastern District of Virginia to file a memorandum of law in connection with the Motion is hereby waived.

12. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Richmond, Virginia
November 10, 2008

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Proposed Counsel to the Debtors
and Debtors in Possession

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

I hereby certify that notice of the Debtors' intent to seek entry of the foregoing proposed order was provided to the parties identified in the Motion and copy of this proposed order was provided to the Office of the United States Trustee for the Eastern District of Virginia prior to submission to this Court.

/s/ Douglas M. Foley